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In The
Supreme Court of the United States

WILLIAM CRAWFORD, *et al.*,

Petitioners,

v.

MARION COUNTY ELECTION BOARD, *et al.*,

Respondents.

INDIANA DEMOCRATIC PARTY, *et al.*,

Petitioners,

v.

TODD ROKITA, *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF DEMOCRAT AND REPUBLICAN ELECTION PROFESSIONALS AS *AMICI CURIAE* IN SUPPORT OF AFFIRMANCE

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INTEREST OF THE *AMICI*[1]

The Commission on Federal Election Reform co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker, III (the "Carter-Baker Commission") wrote, "[t]o build confidence in the electoral process, it is important that elections be administered in a neutral and professional manner."[2] *Amici*[3] share this goal.

Amici are a group of Democrat and Republican current or past election officials including the election clerks from five Indiana counties (including Marion County), and the current President, and four past Presidents, of the Association of Clerks of the Circuit Courts of Indiana. Other *amici* are local election officials from Georgia, Tennessee and Mississippi, including the past President of the Election Commissioners' Association of Mississippi.

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[1] All parties have filed letters with the Clerk consenting to the filing of *amicus* briefs in support of either party.

No counsel for a party authored this brief in whole or in part, nor made any monetary contribution to the preparation or submission of this brief. The Center for Research of Ethics in Public Policy and the Free Market, a nonprofit organization, made a monetary contribution to this brief's preparation and submission, but did not direct the brief's content or drafting.

[2] Commission on Federal Election Reform, Final Report, *Building Confidence in U.S. Elections* at 49 (Sept. 2005).

[3] *Amici* join this brief individually, and not in any official capacity or on behalf of any organization to which they belong.

Amici include current or past members of the Advisory Board of the U.S. Election Assistance Administration ("EAC"), an independent federal agency created under the Help America Vote Act ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666 (codified in scattered sections of 2, 5, 10, 36, and 42 U.S.C. § 15481).

Bob Michel was former Minority Leader of the United States House of Representatives and a member of both the Carter-Ford Commission on election reform and its successor, the Carter-Baker Commission. *Amici* Mary Kiffmeyer was formerly Minnesota's Secretary of State and President of the National Association of Secretaries of States.[4]

Amici's interest is that elections be administered to provide the greatest opportunity for all eligible citizens to participate; that the standards governing the conduct of elections be settled, clear and easily administered; and that those with responsibility for conducting elections have the means to safeguard against schemes to influence the outcome by fraud or corruption. In short, *amici* believe it should be easy to vote, but tough to cheat.

Elections are the foundation of America's political order. Elections are the means by which American citizens choose those to whom they give the honor and responsibility of governing this great nation.

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[4] *Amici's* biographical information is provided in an Appendix to this Brief.

Elections are also the means by which American citizens hold these political leaders accountable. Elections are how the citizens of this nation peacefully resolve often-divisive issues of public policy.

For these reasons, it is vital to the legitimacy of our government that elections be administered in an honest and fair manner. Modern American elections – especially for national office – are often hard-fought partisan contests in which all candidates enjoy passionate support and immense financial resources. Within the last decade, the Presidency of the United States, control of the United States Senate and the governorship of some States have been determined by only hundreds or thousands of votes. The outcome of some of these elections has been delayed by contentious recounts.

By definition there will be a winner and loser in every election. However, we all lose if the fairness and integrity of our election process is compromised.

Some of the *amici* are Democrats. Others are Republicans. But all the *amici* are Americans, and all care deeply that our elections are administered in a fair and honest manner that allows every eligible American to participate and to be confident that the outcome – especially when the results are close – was determined by the will of the voters and not some special interest "gaming" the system through vote fraud or intimidation.

As our nation enters a Presidential election year, *amici* believe it is important that the rules for the

constitutional, fair and honest conduct of elections be determined well in advance of Election Day and, to the greatest extent possible, that the election process be free of lawsuits filed and debated on the eve of Election Day, or partisan recounts in the weeks thereafter. For this reason, *amici* commend this Court for taking this case now, well in advance of the 2008 General Election. *Amici* provide the Court with this brief in the hope that its decision will be mindful of the practical considerations election officials face when seeking to administer elections in a fair and honest manner.

SUMMARY OF ARGUMENT

This Court has repeatedly recognized that States have a compelling interest in assuring the integrity of elections, and must be granted the flexibility to combat potential fraud and corruption in the electoral process. While States are fully justified in responding to *the potential* for electoral fraud, American history – and recent events – confirm that fraud in the voter registration process, and in the conduct of balloting, does indeed occur. Protecting against the threat of real and potential vote fraud must be balanced against the desire to provide every eligible citizen access to the ballot box.

Indiana's Photo ID law is a common-sense, practical effort to strike this balance. An even stricter Photo ID requirement was endorsed by the bi-partisan Carter-Baker Commission. Photo ID measures enjoy

broad, bi-partisan public support, as reflected in the Photo ID requirements adopted in multiple States. The fact that other nations require Photo ID shows the emerging recognition that requiring such identification is a "best practice" in election administration.

Particularly in the wake of the 2000 Presidential election with which this Court is all-too-familiar, there has been increased public disenchantment and cynicism concerning the process by which our elections are conducted. Such public skepticism is troubling, and will lead to even further reductions in voter turnout. As this Court has recognized, "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell v. Gonzalez*, 549 U.S. ___, ___, 127 S. Ct. 5, 7 (2006) (per curiam).

A very high percentage of Americans already possess government-issued Photo ID,[5] and use it daily for everything from boarding airplanes, to entering public buildings, to renting videotapes. Photo ID is ubiquitous in modern society. Requiring that a person provide Photo ID (and allowing alternatives for those who are unable, or for reasons of conscience

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[5] See Pet. App. 69 ("an estimated 99% of Indiana's voting age population already possesses the necessary photo identification").

unwilling, to acquire it) is a reasonable and constitutional means to conduct an election.

Photo ID requirements also provide a significant additional benefit because they simplify election administration. A commonly available, uniform voter identification standard will result in more consistent treatment of each voter and will make it easier to quickly validate the voter's identity.

The lower courts found no evidence that Indiana's Photo ID requirement disenfranchises voters or suppresses turnout, either generally or among any particular group. The Petitioners – like plaintiffs in similar challenges across the country – have failed to identify *even a single voter* whom the Photo ID requirement would disenfranchise. Indeed, the available social science data suggest that voter turnout *increased* among some of the purportedly disadvantaged groups in Indiana after it adopted the contested Photo ID requirements. At a minimum, there is no evidence that Indiana's Photo ID requirements reduce voter turnout among purportedly disadvantaged groups.

ARGUMENT

I. This Court Has Repeatedly Held that States Have a Compelling Interest in Protecting the Integrity of the Election Process, and Must Be Accorded Flexibility To Accomplish that Critical Objective.

In numerous cases decided over many years, this Court has recognized the States' compelling interest

in ensuring a free, honest, and trustworthy election process. This Court has also recognized that States may act preemptively to prevent corruption of that process. As the Court observed over a century ago:

> In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption is a constant source of danger * * *. Such has been the history of all republics, and, though ours has been comparatively free from both these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources.

Ex parte Yarbrough (*The Ku-Klux Cases*), 110 U.S. 651, 666 (1884). "Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity." *United States v. Classic*, 313 U.S. 299, 329 (1941). "A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989).

Vote fraud threatens our government's legitimacy, since it undermines public confidence in an election's outcome, and denies all citizens their constitutional right to have their votes counted equally with other, lawful votes. As *Bush v. Gore*, 531 U.S. 98

(2000) emphasized: "'the right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Id.* at 105, quoting *Reynolds v. Sims*, 377 U.S. 533 (1964). More recently, the Court reiterated that vote fraud disenfranchises and alienates legitimate voters:

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Purcell v. Gonzalez, 549 U.S. ___, ___, 127 S. Ct. 5, 7 (2006) (per curiam).

The Court's decisions also recognize that, to assure the integrity of elections, States must be given the opportunity to determine the appropriate and feasible protective measures. Thus, in holding that election regulations are subject only to a "flexible standard" of review, *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), emphasized that state regulation is essential to assuring honest elections, and that States must have flexibility to establish the specific procedures under which local elections will be administered:

> [T]o subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling

> state interest * * * would tie the hands of States seeking to assure that elections are operated equitably and efficiently. * * * The Constitution provides that States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, § 4, cl. 1, and the Court therefore has recognized that States retain the power to regulate their own elections. Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes."
>
> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects – at least to some degree – the individual's right to vote * * *."

Id. at 433-34 (citations omitted). Similarly, *Clingman v. Beaver*, 544 U.S. 581 (2005), emphasizes that "it is beyond question that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Id.* at 593 (citation omitted).

States need not wait until after they have been robbed before locking the door. They may address potential problems preemptively, and need not wait until they mature into a full-fledged crisis:

> Legislatures * * * should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.

Munro v. Socialist Workers Party, 479 U.S. 189, 195-96 (1986).

II. Documented Instances of Vote Fraud Confirm the States' Interest in Implementing Reasonable Non-Discriminatory Preventative Measures.

Political power is, unfortunately, a proven inducement to corruption. As James Madison noted in Federalist 51, men are not angels and sound government must be structured in light of that unfortunate, but realistic, understanding. Elections provide the means to acquire political power and history teaches that some people (even if only a small percentage) are willing to violate the law to achieve political power. If men were angels, ballot boxes could be placed unattended on street corners. It is the role of election professionals to prevent the election process from being subverted to such corrupt ends.

Conducting fair and honest elections that protect the principle of "one person, one vote" involves three fundamental components: (1) a current and accurate voter roll on which eligible registered voters are correctly and accurately listed at the proper precinct,[6] and ineligible persons excluded; (2) verifying that the person casting a ballot is the person registered on the voter roll; and (3) accurately counting every lawfully cast ballot, and accurately and timely reporting the outcome.

The current case concerns the means by which Indiana election officials verify that the person casting a ballot is in fact the person on the voter roll. Requiring reliable voter identification also provides some assurance that the registered individual is indeed an eligible voter.

A. Voter Registration Fraud Occurs.

Maintaining a current and accurate voter roll is a constant challenge for election officials.[7] This is due to

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[6] Registering voters in the proper precinct ensures each voter has the opportunity to vote in the elections affecting that specific voter. Precinct-based voting also prevents multiple voting at different polling places. This Court upheld pre-election registration and precinct voting requirements as long ago as *Mason v. Missouri*, 179 U.S. 328, 335 (1900).

[7] When reasonable measures to confirm elegibility are not conducted before a name is added to the roll, it fosters fraudulent registrations. See Keith Erwin, *Potential Fraud Feared In Drive To Sign Up Voters*, SEATTLE TIMES, Feb. 23, 2007, at B1; Brad Shannon, *Fraud Alleged in 2004 Washington Voter-Registration*

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voters moving (within or between jurisdictions) without updating their voter registration, a voter's death,[8] or a voter becoming ineligible to vote based on a criminal conviction.[9]

Ineligible persons on voter rolls include those not citizens. A congressional task force found, for example, that there was "clear and convincing evidence that 748 invalid votes" by aliens were cast in a 1996 California congressional election.[10] A Utah study

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Drive, THE OLYMPIAN, June 23, 2007, at 1C; Keith Erwin, *Three Plead Guilty in Fake Voter Scheme*, SEATTLE TIMES, Oct. 30, 2007, at B5 (chronicling discovery of "the biggest voter-registration fraud scheme in Washington history" in which three persons plead guilty to submitting more than 1,800 fictitious voter-registration cards during a 2006 registration drive); *Questions Abound in Voter Push*, KANSAS CITY STAR, Oct. 12, 2006, at B1.

[8] Matt Wynn, *Deceased Still On State's Voting Rolls*, COLUMBIA MISSOURIAN, Nov. 2, 2006, at 1A (finding 10,520 deceased citizens remained registered in Missouri during 2004 election); Lisa M. Collins, *In Michigan Even the Dead Vote*, DETROIT NEWS, Feb. 26, 2006, at 1A.

[9] See *Hayden v. Pataki*, 449 F.3d 305 (2nd Cir. 2006) (*en banc*) (New York statutes disenfranchising felons not prohibited by Voting Rights Act); *United States v. Prude*, 489 F.3d 873 (7th Cir. 2007) (upholding conviction of defendant for fraudulently claiming eligibility to vote despite disqualifying felony conviction).

[10] H.R. 105-416, 105th Cong. at 12 (1998), see also John Fund, WALL STREET JOUR., OpinionJournal, May 21, 2006 at http://www.opinionjournal.com/diary/?id=110008411 (noting that "[s]everal California counties report that an increasing number of registered voters called up for jury duty write back saying they are ineligible because they aren't citizens").

found at least 129 registered voters who were deportable or "likely to be illegal aliens,"[11] while *The New York Times* recently noted that voting rolls in Arizona "include[] people who are ineligible to vote, like illegal immigrants and felons."[12] Following the 2004 general election, several people in Florida were charged and/or convicted of illegally voting and making false citizenship claims.[13] Indiana's population of illegal aliens was estimated in 2000 to be 45,000 – a 300% increase from 1990.[14] Indiana's Photo

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[11] See Letter from John M. Schaff, Utah Auditor General, to John L. Valentine, Utah State Senate President (Feb. 8, 2005), *available at* http://le/utah.gov/audit/05_01ilr.pdf.

[12] Randal C. Archibald, *Arizona Ballot Could Become Lottery Ticket*, N.Y. TIMES, July 17, 2006, at A1.

[13] See *U.S. v. Chaudhary, a/k/a Usman Ali*, No. 04-CR-00059 (N.D. Fla.); *U.S. v. Mohsin Ali*, No. 4-05-CR-47 (N.D. Fla.); *U.S. v. Velasquez*, No. 03-CR-20233 (S.D. Fla.) (involving a former candidate for the Florida legislature); *U.S. v. McKenzie*, No. 04-CR-60160 (S.D. Fla.); *U.S. v. Francois*, No. 04-CR-20488 (S.D. Fla.); *U.S. v. Exavier*, No. 04-CR-60161 (S.D. Fla.); *U.S. v. Lloyd Palmer*, No. 04-CR-60159 (S.D. Fla.); *U.S. v. Velrine Palmer*, No. 04-CR-60162 (S.D. Fla.); *U.S. v. Shivdayal*, No. 04-CR-60164 (S.D. Fla.); *U.S. v. Sweeting*, No. 04-CR-20489 (S.D. Fla.); *U.S. v. Lubin*, No. 04-CR-60163 (S.D. Fla.); *U.S. v. Bennett*, No. 04-CR-14048 (S.D. Fla.); *U.S. v. O'Neil*, No. 04-CR-60165 (S.D. Fla.); *U.S. v. Torres-Perez*, No. 04-CR-14046 (S.D. Fla.); *U.S. v. Phillips*, 04-CR-80103 (S.D. Fla.); *U.S. v. Bain Knight*, No. 04-CR-14047 (S.D. Fla.).

[14] U.S. Immigration and Naturalization Service, Office of Policy and Planning, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, at 15, Table 1 (Jan. 2003), *available at* http://www.uscis.gov/graphics/shared/aboutus/statistics/Ill_Report_1211.pdf.

ID requirement addresses this problem, since Indiana requires proof of legal status before it will issue such identification. See 140 Ind. Admin. Code 7-4-1 to -3 (2006); Pet. App. 32-33.

Besides these sources of inaccuracies, recent elections have witnessed a substantial increase in voter registration fraud, which occurs when someone seeks to register a real person who is not eligible, an eligible voter multiple times in different jurisdictions, or a fictional person. In the 2004 Presidential election, Chad Staton was convicted in Ohio of submitting almost 100 fraudulent voter registration forms for, among others, Dick Tracy, Mary Poppins and Michael Jordan, for which he was reportedly paid in crack cocaine.[15] King County, Washington recently settled civil and criminal vote fraud charges against an organization for submitting a large number of fake or fraudulent voter registration cards.[16] The Senate debate on HAVA described the registration of a number of dogs as voters in States across the country.[17]

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[15] *State of Ohio v. Chad Staton*, No. 04-CR009020 (Defiance County, Ohio Oct. 22, 2004); *Man Arrested After Voter Forms Turned in For Mary Poppins, Michael Jordan, Ohio Officials Say*, THE ASSOCIATED PRESS, Oct. 19, 2004.

[16] See *Settlement & Compliance Agreement* (July 27, 2007) *available at* http://www.metrokc.gov/proatty/news/2007/Settlement%20and%20Compliance%20Agreement.pdf.

[17] See 148 Cong. Rec. S10489 (Oct. 16, 2004) (statement of Sen. Bond); see also Keith Erwin, *Woman Registers Her Dog to Vote; Prosecutors Growl*, SEATTLE TIMES, June 22, 2007, at B1.

Reports from across the country suggest the magnitude of such inaccurate and fraudulent registrations. Thus, it has been reported:

- that Detroit's voter rolls contain "as many as 20,000 dead people and roughly 100,000 wrong addresses";[18]
- that Florida had more than 64,000 dead people on its voter rolls in December 2004;[19]
- that 46,000 were illegally registered to vote in both Florida and New York City,[20] and 27,000 in both Florida and Ohio;[21]
- while an audit found that "nearly 10 percent, or 24,000 of [St. Louis'] registered voters, are either dead, [have] been convicted of a felony, [are] registered in another jurisdiction or [are] otherwise questionable."[22]

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[18] Lisa M. Collins, *In Michigan, Even Dead Vote*, DETROIT NEWS, Feb. 26, 2006, at 1A.

[19] Geoff Dougherty, *Dead Voters on Rolls, Other Glitches Found in 6 Key States*, CHICAGO TRIBUNE, Dec. 4, 2004, at C13.

[20] Russ Buettner, *Exposed: Scandal of Double Voters*, N.Y. DAILY NEWS, Aug. 22, 2004, at 4.

[21] Scott Hiaasen, Dave Davis and Julie Carr Smyth, *Voters Double-Dip in Ohio, Fla.*, CLEVELAND PLAIN DEALER, Oct. 31, 2004.

[22] Doug Moore, *Auditor Criticizes Election Board*, ST. LOUIS POST-DISPATCH, May 26, 2004, at C4.

Indeed, the District Court noted that "[b]oth parties have submitted evidence in this case which indicates that Indiana's voter rolls are significantly inflated." Pet. App. 109.

Election officials work diligently and spend considerable resources seeking to maintain current and accurate voter rolls. However, as the foregoing demonstrates, this is a substantial undertaking and voter rolls are not always accurate.

Requiring that a person seeking to vote provide Photo ID will assure that the person on the roll is in fact a living, real person, and some assurance that that person is actually eligible to vote.

B. Vote Fraud at the Polling Place Occurs.

Regrettably, vote fraud is not a myth. The bipartisan Carter-Baker Commission concluded that "there is no doubt" that in-person voting fraud occurs; "[i]n close or disputed elections, * * * a small amount of fraud could make the margin of difference."[23]

America has an unfortunate history of vote fraud, and much of this fraud is conducted at the polling

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[23] Commission on Federal Election Reform, *supra* n. 2, at 18.

place.[24] In *Deliver the Vote: A History of Election Fraud,* Professor Tracey Campbell sums up this history:

> [W]e must * * * confront the uncomfortable truth that election fraud has been a common component of our nation's electoral history, and, in the aggregate, undermines the only check that the people have over their leaders. This fundamental threat to our democratic birthright must no longer be dismissed by partisan finger-pointing * * *.[25]

William Marcy "Boss" Tweed famously said, "I don't think there was ever a fair or honest election in the City of New York."[26] Corrupt machine politics and

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[24] President Carter's book TURNING POINT (1995) recounts the massive vote fraud he experienced in his first run for the Georgia State Senate; Carter was declared the victor only following litigation and a recount revealing this substantial fraud.

Professor Robert Pastor, a Carter-Baker Commission member and former Carter Administration official, has testified to his own disenfranchisement when he was informed someone had voted in his name before he appeared at the polls. *Hearing before the U.S. Comm'n on Civil Rights*, 111-18 (Oct. 13, 2006).

[25] Tracy Campbell, DELIVER THE VOTE: A HISTORY OF ELECTION FRAUD, AN AMERICAN POLITICAL TRADITION – 1742-2004, at 340 (2005). See also, John Fund, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY (2004).

[26] Andrew Gumbel, STEAL THIS VOTE: DIRTY ELECTIONS AND THE ROTTEN HISTORY OF DEMOCRACY IN AMERICA 74-75 (2005). Voter impersonation was a device favored by Boss Tweed's machine: "[r]epeaters," often felons, were "given five dollars, as much liquor as they could hold, and a list of the recently

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vote fraud are a commonplace in the nation's past; Indiana has its own notorious history of such practices.[27] The margin of victory in presidential elections has been within the number of votes that were suspected of being obtained by fraud.[28]

Amici do not suggest that America's present election system is characterized by large-scale vote

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deceased whose names they were to use to cast as many ballots as possible. 'Vote early and often' was Tammany's much vaunted maxim, and that was exactly what these men intended to do." *Id.*

[27] As far back as the 1880s, Indiana was known for election fraud. See Campbell, *supra* n. 25, at 95 (describing the use of "floaters" – people voting multiple times – in Indiana in the 1888 presidential election; "[b]y the late 1880s, Indiana had acquired a notorious reputation in the annals of electoral corruption * * * ."). In a nationally prominent scandal in 1914, federal authorities prosecuted 114 people for an election fraud scheme in Terre Haute that included fraudulent voter registrations that allowed some individuals to vote as many as 22 times. See *id.* at 147-49. More recently, the Indiana Supreme Court invalidated the 2003 mayoral primary in East Chicago because of an absentee-ballot fraud scheme. See *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004).

[28] Richard A. Posner, BREAKING THE DEADLOCK: THE 2000 ELECTION, THE CONSTITUTION, AND THE COURTS 39-40 (2001). "Because of extensive vote fraud by Democrats as well as Republicans, it is uncertain whether Tilden really did win the popular vote [in the 1876 presidential election]." *Id.* at 39. In other elections the suspected vote fraud may not have been sufficient to change the outcome, but nevertheless undermined public confidence in the honesty of the election process. *Id.* at 40 (noting that "[t]here were serious allegations of fraud by Democrat election officials in Illinois and Texas" in John F. Kennedy's 1960 election).

fraud like the machine politics of yore. The fact that vote fraud is less prevalent today than in the days of Boss Tweed is the result of reforms that have improved our election process. But election reform (such as that proposed by the Carter-Baker Commission and adopted by HAVA) is a continuing process.

Vote fraud is not, unfortunately, merely of historical interest. Vote fraud, including fraud practiced at the polling place remains a feature of recent American elections. The Carter-Baker Commission provided several recent examples:

> The November 2004 elections [] showed that irregularities and fraud still occur. In Washington, for example, where Christine Gregoire was elected governor by a 129-vote margin, the elections superintendent of King County testified during a subsequent unsuccessful election challenge that ineligible ex-felons had voted and that votes had been cast in the names of the dead. * * * In Milwaukee, Wisconsin, investigators said they found clear evidence of fraud, including more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses, or voted in the name of a dead person. * * * By one estimate, for example, there were over 181,000 dead people listed on the voter rolls in six swing states in the November 2004 elections,

including almost 65,000 dead people listed on the voter rolls in Florida.[29]

The District Court noted that Indiana considered the experience of other States when adopting its voter identification law, Pet. App. 109, as it was fully entitled to do. *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986). Specifically, Indiana considered Missouri's experience with vote fraud. That experience is instructive.

The "Pendergast Machine" in Kansas City so institutionalized vote fraud in Missouri that the 1999-2000 *Official Missouri State Manual* (published by Democrat Missouri Secretary of State Rebecca Cook) describes its practices in detail.[30] Missouri's other major city, St. Louis, likewise has a "miserable tradition" of vote fraud.[31]

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[29] Commission on Federal Election Reform, *supra* n. 2, at 4.

[30] "Pendergast's ability to turn out the vote was phenomenal. Not only did many of the poorest people in Kansas City vote regularly, but did so frequently at each election. Indeed, in some wards voter turnout often approached one hundred percent, when it did not exceed it. Even more miraculously, the dead would rise at each election in numbers that would astonish an expectant Christian." *Missouri's Most Important Politician*, 1999-2000 OFFICIAL STATE MANUAL 36-39.

[31] Editorial, *Miserable Tradition*, ST. LOUIS POST DISPATCH, Dec. 11, 2000, at B2. For a more detailed summary of Missouri's longstanding history of vote fraud, see, Mark F. (Thor) Hearne II, *The Missouri Voter's Protection Act – Real Election Reform for All Missouri Voters*, ST. LOUIS LAWYER (June 2006).

The 2000 Presidential election in St. Louis became a matter of national attention (and local embarrassment).[32] The *Los Angeles Times* noted that in St. Louis,

> [t]he dearly departed seem to have quite a constituency around here. At least three dead aldermen registered to vote in Tuesday's mayoral primary. So did one alderman's deceased mother. And, a dead man was listed as the chief plaintiff in a lawsuit filed on election day last November. He was having trouble voting, the suit said, due to long lines at his polling station. So he petitioned a judge – successfully – to keep city ballot boxes open late.[33]

Both Democrat Secretary of State Cook and her Republican successor investigated the election; both found significant instances of vote fraud and irregularities.[34]

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[32] For a more detailed account of the St. Louis 2000 election see Bruce Ashton, *Dead Man Voting*, THE RIVERFRONT TIMES, Apr. 4, 2002; *The Florida Election Debacle: Can it Happen in Missouri?*, JOUR. OF THE MISSOURI BAR, Nov.-Dec. 2001, at 294-300.

[33] Stephanie Simon, *In St. Louis, Dead Are Causing Lively Debate with Their Votes*, LOS ANGELES TIMES, February 28, 2001, at A1.

[34] Of the 1,366 votes cast by affidavit in St. Louis that Secretary Cook reviewed, she concluded that "135 people who were not registered to vote were permitted to vote at a polling place without a court order and without apparent authorization from [Election] Board Officials." Report by Secretary of State

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Vote fraud continues to be a concern in other States as well. Thus,

- The *Detroit News* reported that, "[a]cross Michigan, 132 people were listed as having voted in November [2005]'s local elections although they had recently died * * * ."[35]
- *The New York Daily News* reported that between 400 and 1,000 voters registered in both Florida and New York City had voted twice in at least one election.[36]
- In September 2004, the *Kansas City Star* reported that more than 300 people may have voted twice in the same election in Missouri in 2000 and 2002, and the number "could be even higher."[37]

Rebecca McDowell Cook, *Analysis and General Recommendation Report Regarding the November, 2000 General Election in the City of St. Louis* 8-9 (Jan. 4, 2001); see also Report by Secretary of State Matt Blunt, *Mandate for Reform: Election Turmoil in St. Louis* (July 2001).

[35] Collins, *supra* n. 18, at 1A.

[36] Buettner, *supra* n. 20, at 4.

[37] Greg Reeves, *One Person, One Vote? Not Always*, KANSAS CITY STAR, Sept. 5, 2004, at A1. Two people plead guilty to voting in both Kansas and Missouri in the 2000 and 2002 federal elections. *U.S. v. Scherzer*, No. 04-CR-00401 (W.D. Mo.); *U.S. v. Goodrich*, No. 04-CR-00401 (W.D. Mo.). Two others were charged with voting at two different Missouri locations. *U.S. v. Jones*, No. 05-CR-00257 (W.D. Mo.); *U.S. v. Martin*, No. 05-CR-00258 (W.D. Mo.).

- The *Denver Post* reported in March 2005 that "[h]undreds of Coloradans are being investigated for voter fraud in the November [2004] elections. Prosecutors in at least 47 counties are probing cases involving accusations of forged signatures, felons voting or people who attempted to vote twice."[38]

- It was reported in January 2005 that the FBI and U.S. Attorney's office were investigating 59 cases of double voting in Duval County, Florida.[39] In Broward County, officials referred at least 30 cases of suspected double voting to law enforcement.[40]

- A joint federal-local law enforcement task force in Milwaukee found "clear evidence of fraud in the [Nov. 2, 2004] election," including hundreds of felons voting and "more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake"; the task force also discovered the number of votes counted in Milwaukee exceeded the number of persons

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[38] Susan Greene & Karen E. Crummy, *Voter Fraud Probed in State Double Dippers*, DENVER POST, Mar. 24, 2005, at A-01.

[39] David DeCamp, *Double Voting Being Investigated*, FLA. TIMES-UNION, Jan. 25, 2005, at B-1.

[40] Amy Sherman, *Double-Voters' Names Going to Prosecutors*, MIAMI HERALD, Nov. 14, 2004, at 5B.

> recorded as voting by 4,500.[41] The U.S. Attorney later downplayed notions of a "massive conspiracy" but charged 18 people with felonies, including four cases of "double voting."[42]

As the district court noted, "without a photo identification requirement it is nearly impossible to detect in-person voter impersonation." See Pet. App. 109; see also *id.* at 7-8. Thus, the number of prosecutions, convictions, or documented reports of in-person vote fraud undoubtedly *under*represents the actual incidence.[43]

While perhaps not as widespread as in the past, regrettably the types of vote fraud practiced by "Boss" Tweed and the "Pendergast Machine" are still a very real concern for election officials. Requiring "a person" to provide reliable identification, to confirm they

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[41] *Preliminary Findings of Joint Task Force Investigating Possible Election Fraud*, DEPT. OF JUSTICE, May 10, 2005; Greg Borowski, *Inquiry Finds Evidence of Fraud in Election: Cast ballots outnumber voters by 4,609*, MILWAUKEE JOUR. SENT., May 11, 2005, at 1A (citing the newspaper's own investigation revealing 278 felons who illegally voted after reviewing only 38% of statewide ballots).

[42] Steve Schultze, *No Vote Fraud Plot Found*, Milwaukee Journal-Sentinel, Dec. 6, 2005, at A1.

[43] Milwaukee provides a concrete example: a task force found "widespread record keeping failures" that would create "difficulties proving criminal conduct beyond a reasonable doubt in a court of law." See *supra* n. 41. The U.S. Attorney lamented that "I don't know how you are going to prove a case when there is no paper trail." Schultze, *supra* n. 42, at A1.

are in fact the eligible voter listed on the roll, is a common-sense safeguard against these vote fraud schemes, which disenfranchise lawful voters and undermine public confidence in the legitimacy of an election's outcome.

III. Photo ID Requirements Enjoy Broad Bi-Partisan Support.

Although Petitioners claim that the purpose behind Indiana's Photo ID law is improperly partisan, *e.g.*, Dem. Br. 17-19, 39-40, the fact is that a nation-wide bi-partisan consensus has emerged in favor of Photo ID as a reasonable confidence-building, fraud-prevention measure.

A. The Bi-Partisan Carter-Baker Commission Recommended a Photo ID Requirement Stricter than Indiana's.

In the aftermath of the 2000 election, Presidents Carter and Ford co-chaired a bi-partisan commission (the Commission on Federal Election Reform) that investigated the conduct of federal elections and recommended changes in election administration.

Responding to these recommendations, Congress passed the Help America Vote Act of 2002 ("HAVA")[44] with broad bi-partisan support. HAVA was intended

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[44] Pub. L. No. 107-252, 116 Stat. 1666 (codified in scattered sections of 2, 5, 10, 36, and 42 U.S.C. § 15481).

to "change the system to make it easier to vote and tougher to cheat." 148 Cong. Rec. S10488 (2002) (statement of Sen. Bond). The legislation's "one central goal [] was to make it easier to vote in America and much harder to corrupt our Federal election system." *Id.* at S2527 (statement of Sen. Dodd).[45]

HAVA demonstrated bi-partisan recognition of the three principles essential to any fair and honest election: (1) a current and accurate voter roll; (2) safeguards to assure that the person casting a ballot is reliably identified as the individual registered; and (3) accurate and unbiased procedures to properly count and report each vote cast.

Among other things, HAVA Section 15483(a)(5)(A)(ii) was specifically included to address vote fraud, and provides minimum requirements for identification of voters who register by mail, including presentation of photographic identification.[46] Although HAVA requires

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[45] President Bush noted that the Carter-Ford Commission's recommendations "helped inspire this legislation"; "our nation is grateful for their work on election reform and for all they have given to America." Remarks by President at Signing of H.R. 3295, The Help America Vote Act of 2002, October 29, 2002, 2002 WL 31415995 (White House).

[46] See, Hearing on H.R. 3295 Before the H. Comm. on the Judiciary, 107th Cong. (2001), available at 2001 WL 1552086 (F.D.C.H.) (statement of Rep. F. James Sensenbrenner, Jr.) (identifying vote fraud as a significant motive behind HAVA's anti-fraud provisions); Remarks by President Bush at Signing of H.R. 3295, Help America Vote Act of 2002 (Oct. 29, 2002), 2002 WL 31415995 (White House), at *2.

photographic identification for persons casting a ballot for the first time following a mail-in registration, Section 15483(a)(5)(A)(ii) also provides non-Photo ID alternatives, including "a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter."

These identification standards are a "floor," not a "ceiling." HAVA explicitly provides that the relevant provisions "are minimum requirements," and shall not "be construed to prevent a State from establishing election technology and administration requirements that are more strict," "so long as such State requirements are not inconsistent with the Federal requirements." 42 U.S.C. § 15484 (2006).

The Carter-Baker Commission was convened after the 2004 presidential election. This Commission was the successor to the Carter-Ford Commission and included many of the same members. The Carter-Baker Commission's Final Report represents a high-water mark in the development of national, bi-partisan, consensus recommendations on post-HAVA election reform.

Among its other recommendations, the Commission wrote that,

> [t]o ensure that persons presenting themselves at the polling place are the ones on the

> registration list, the Commission recommends that states require voters to use the REAL ID[47] card, which was mandated in a law signed by the President in May 2005. The card includes a person's full legal name, date of birth, a signature (captured as a digital image), a photograph, and the person's Social Security number. This card should be modestly adapted for voting purposes to indicate on the front or back whether the individual is a U.S. citizen. States should provide an EAC-template ID with a photo to non-drivers free of charge.[48]

Notably, the Carter-Baker Commission's bi-partisan Photo ID recommendation is more stringent than Indiana's, requiring validation of provisional ballots within 48 hours of an election, J.A. 143, as opposed to Indiana's 10-day validation period.

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[47] The Federal REAL ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 231, 302 (to be codified in scattered sections of 8 and 49 U.S.C. § 30301) established requirements that States must meet by 2008 for the issuance of photo identification that will be necessary to enter a federal building, board a plane or open a bank account. § 202, 119 Stat. at 312.

[48] Comm. on Federal Election Reform, *supra* n. 2, at 18-21.

Besides the Co-Chairs, this recommendation was supported by Commissioners Robert Pastor, Betty Castor, Rita Dimartino, Lee Hamilton, Kay Coles James, Benjamin Ladner, David Leebron, Nelson Lund, Shirley Malcom, Bob Michel, Susan Molinari, Robert Mosbacher, Ralph Munro, Jack Nelson, Tom Philips, and Sharon Priest. Commissioners Tom Daschle, Spencer Overton, and Raul Yzaguirre dissented.

B. Photo ID Requirements Are Broadly Supported by Voters Themselves.

Requiring a voter to identify himself or herself with Photo ID enjoys broad, consistent, bi-partisan public support.[49] Nationally, an April 2006 Wall Street Journal/NBC poll found that more than 80% of U.S. citizens support the requirement that a person show a Photo ID before voting.[50] This included the support of an overwhelming majority of Democrats, Republicans and members of minority communities.

When the Photo ID issue is placed on the ballot, it receives strong bi-partisan support. Albuquerque voters, with the support of Hispanic Democrat Mayor Chavez, adopted a Photo ID requirement for all Albuquerque elections.[51] In Arizona voters passed a

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[49] While this consistently strong, bi-partisan support does not decide the constitutional issues, it counters Petitioners' claim of improperly partisan motives, and confirms that Photo ID requirements will increase public confidence in the integrity of the election process.

[50] See NBC/WALL-STREET JOUR. SURVEY, *available at* http://online.wsj.com/public/resources/documents/poll20060426.pdf (62% "strongly favored" Photo ID requirement, while an additional 19% "mildly favored" it).

[51] Polling showed photo ID with overwhelming support "among Republicans and Democrats, Anglos and Hispanics and across income levels" in Albuquerque; a pre-election poll showed the measure supported by a 77 to 17% margin, including 92% of Republicans and 66% of Democrats. Dan McKay, *Voter Picture ID Has Wide Support*, ALBUQUERQUE JOUR., Aug. 24, 2005, at A1. Albuquerque Mayor Martin Chavez, a Democrat, endorsed the measure, emphasizing that "[i]ntegrity of the voting process is essential." Jim Ludwick, *Critics: Mail-in Voters Should Show ID,*

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popular state-wide initiative (Proposition 200) that required prospective voters to present proof of citizenship before registering to vote.[52]

Voter identification requirements – including Photo ID requirements – have emerged as a national consensus.[53] When the issue has been placed before voters, it enjoys overwhelming, consistent, bipartisan support.

C. At Least Seven States Require Some Form of Photo ID.

More than 24 states currently require every voter to provide identification before casting a ballot;[54] according to the National Conference of

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Too, ALBUQUERQUE JOUR., Sept. 12, 2005, at A1. Election officials reported that "the rule change didn't cause any problems" when first implemented. *New ID Rule Passes Test*, ALBUQUERQUE JOUR., Nov. 16, 2005, at B1.

[52] See *Lawsuit Off Base In Challenging Voter ID Rules*, ARIZ. DAILY STAR, May 15, 2006, at A6. This is the measure at issue in *Purcell v. Gonzalez*, 549 U.S. ___, 127 S. Ct. 5 (2006) (per curiam).

[53] See also *Developments in the Law: Voting and Democracy*, 119 HARV. L. REV. 1127 (2005); Michael Barone, Web Blog, *Message to the Secretaries of State: 1679 and 2006*, U.S. NEWS AND WORLD REPORT, Feb. 6, 2006 at http://www.usnews.com/blogs/barone/2006/2/6/message-to-the-secretaries-of-state-1679-and-2006.html (remarks at meeting of the National Association of Secretaries of State).

[54] See *Requirements for Voter Identification, Nat'l Conf. of State Legislatures* (Feb. 1, 2007) at http://www.ncsl.org/programs/legismgt/elect/taskfc/VoterIDReq.htm.

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State Legislatures, of these 24, seven require some form of Photo ID.[55]

Among the jurisdictions requiring federal preclearance under Section 5 of Voting Rights Act, 42 U.S.C. § 1973c, the U.S. Department of Justice has approved voter identification requirements in

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For a more detailed discussion of the voter identification requirements in the various states, see Brief of Texas, *et al.* as *Amici Curiae* Supporting Respondents.

[55] Florida, Georgia, Hawaii, Indiana, Louisiana, South Dakota and Ohio. *Id.* In addition, the Michigan Supreme Court recently upheld that State's Photo ID requirement against federal and State constitutional attack. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich. 1, 43, 740 N.W.2d 444, 467 (Mich. 2007) ("whether the incidence of in-person voter fraud is believed to be rare or frequent, the fact of the matter is that no voter identification was required before the enactment [of the Photo ID law] and no one knows – or could possibly know – the frequency with which in-person voter fraud occurs at the polls. More relevant to our constitutional inquiry is the fact that a legislature – particularly one given a constitutional mandate to 'preserve the purity of elections' – is not required to wait for an electoral calamity before it may act to fulfill its obligation to preserve."). Arizona's Photo ID requirement is the subject of litigation which has reached this Court. *Purcell v. Gonzalez*, 549 U.S. ___, 127 S. Ct. 5 (2006) (per curiam).

Missouri also enacted Photo ID legislation, which was declared unconstitutional by the State's Supreme Court solely under the purportedly "more expansive," "greater protection" of voting rights under the *state* constitution. *Weinschenk v. State*, 203 S.W.3d 201, 212 (Mo. 2006).

Virginia, Georgia, Arizona and New Mexico. Georgia's Photo ID requirement was approved twice.[56]

There are of course differences among the various States' laws, and none are precisely identical to Indiana's. However, the legislation adopted in multiple States demonstrates that the principle of requiring a voter to provide some form of reliable identification (generally a government-issued Photo ID) enjoys broad support.

D. Numerous Other Countries Require Some Form of Photo ID.[57]

The interest in conducting honest elections, and concerns over vote fraud, are not unique to the United States. Former President Carter is often called upon to visit other nations and observe the conduct of their elections, or to recommend measures

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[56] See, *e.g.*, U.S. Department of Justice, Letter to Sen. Bond, Feb. 26, 2002, at http://www.usdoj.gov/crt/voting/hava/bond_ ltr. htm ("Far from automatically violating Section 5, identification requirements can be an efficient and effective means of combating voter fraud.").

[57] *Amici* do not suggest that the election practices of other nations determine whether a specific measure passes muster under the United States Constitution. Rather, the widespread adoption of Photo ID requirements, as a means to prevent vote fraud and assure the integrity of the election process, shows this is an internationally recognized "best practice."

that other nations can take to safeguard the integrity of their election process.[58]

The Carter-Baker Commission noted that "[v]oters in nearly 100 democracies use a photo identification card without fear of infringement of their rights."[59] Mexico, for example, requires strict voter identification to assure voter confidence in a fair and honest election.

> Mexico spends much more than the U.S. on measures to prevent vote fraud. All voters in Mexico must present voter IDs at the polls, which include not only a photo but also a thumbprint. The IDs themselves are essentially counterfeit-proof, with special holographic images, imbedded security codes, and a magnetic strip with still more security information. As an extra precaution, voters' fingers are dipped in indelible ink to prevent them from voting multiple times.[60]

Observers have noted that these strict voter registration and identification requirements have done nothing to suppress turnout: "in the three presidential elections Mexico has conducted since the

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[58] Commission for Federal Election Reform, *supra* n. 2, at 5.

[59] *Id.*

[60] John R. Lott, Jr. & Maxim C. Lott, *Look South: Americans could learn from Mexican elections,* NATIONAL REVIEW ONLINE, July 6, 2006, at http://article.nationalreview.com (also noting that Mexican voters are required to appear in-person both to apply for Photo ID card, and to receive the issued card).

National Election Commission reformed the election laws '68% of eligible citizens have voted, compared to only 59% in the three elections prior to the rule changes.' People are more likely to vote if they believe their ballot will be fairly counted."[61]

IV. Requiring Photo ID Increases Public Confidence, and Increased Public Confidence Increases Participation.

This Court has held that "the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits," a direct restriction on political expression. *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 143 (2003). Even in that context – where the exercise of individual rights is directly and significantly curtailed – the Court has recognized that "the appearance of undue influence * * * 'could jeopardize the willingness of voters to take part in democratic governance.'" *Id.* at 144 (citation omitted).

Thus, even apart from the use of Photo ID requirements to prevent *actual* vote fraud, the fact that such requirements will increase public confidence in the integrity of the election process provides a separate justification for such measures.

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[61] John Fund, OpinionJournal, *How to Run a Clean Election, What Mexico can teach the United States*, WALL STREET JOUR., July 10, 2006, at http://www.opinionjournal.com/diary/?id=110008630.

Increasing public confidence in the election process was one of the primary motivations for the Carter-Baker Commission's recommendations. As the Commission noted,

> Elections are the heart of democracy. They are the instrument for the people to choose leaders and hold them accountable. At the same time, elections are a core public function upon which all other government responsibilities depend. If elections are defective, the entire democratic system is at risk. Americans are losing confidence in the fairness of elections, and while we do not face a crisis today, we need to address the problems of our electoral system.
>
> Our Commission on Federal Election Reform was formed to recommend ways to raise confidence in the electoral system.[62]

The test of our nation's election system is not found in landslides, but when the outcome turns upon a handful of votes. As this Court and our nation found in 2000, even the presidency can be decided by several hundred votes. That election was not unique. In 2006, control of the United States Senate was decided by less than 4,000 votes: the margin of victory in the Montana and Virginia Senate races was 3,562, and 9,329, respectively; control of the Senate turned upon the outcome of either race. A number of Congressional

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[62] Commission on Federal Election Reform, *supra*, n. 2, at ii.

races were similarly determined by several hundred votes. In 2004 Washington State experienced a several month ordeal during which the outcome of their Governor's race was decided in the course of three recounts by a margin of 129 votes.[63]

The point is, vote fraud need not be massive to undermine an election's outcome. Several hundred, or several thousand, votes can determine the Presidency, control of Congress, or state-wide races.

V. Clear and Uniform Photo ID Requirements Facilitate Expeditious, Consistent Processing of Voters at the Polls.

The conduct of American elections depends to a significant degree upon the participation of tens of thousands of poll workers, who generally serve on a volunteer (or nominally compensated) basis, and who are not full-time government employees. There is limited opportunity to train these civic-minded election workers.

Some States allow voters to simply identify themselves at the poll; unless challenged, this self-identification is self-validating. In other States, voters are merely required to sign a voter register (leaving it to inexpert poll workers to then compare that signature to one on file). In still other States, existing laws permit voters to appear with a veritable

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[63] *Id.* at 4.

smorgasbord of forms of identification, singly or in combination: utility bills; (government or private) checks made payable in their names (with or without addresses); Social Security cards; bank statements; or employer-, military-, or school-issued identification.[64]

This multitude of identification alternatives can create confusion for poll workers – and for voters. The result is delays in processing voters prior to issuing them a ballot, and the significant potential for inconsistent treatment of voters between polling stations, and even between poll workers at a single location.

A uniform standard of reliable identification readily and freely accessible to all eligible voters, such as Indiana's Photo ID requirement, eliminates this confusion by imposing a single standard familiar to poll workers and voters alike. As noted by the State Respondents (Br. at 25), virtually every eligible voter already possesses such identification; the requirement to present it to verify identity is commonplace. See Pet. App. 3, 108. The result of imposing a uniform Photo ID requirement is more expeditious, consistent and fair processing of all eligible voters, which furthers the aim of instilling public confidence, and encouraging the widest possible participation.

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[64] See Brief of Texas, *et al.* as *Amici Curiae* Supporting Respondents (cataloguing voter identification requirements in the States).

VI. There Is no Evidence Indiana's Photo ID Requirement Disenfranchises Lawful Voters.

As the State Respondents note (Br. at 24), neither the Petitioners in this case – nor the plaintiffs in other challenges to Photo ID requirements – have identified a *single* voter who would be prevented from voting by operation of the identification requirements. This is hardly surprising, given the ubiquity of photo identification in modern society, plus the provisions of laws like Indiana's which allow voters to exercise the franchise even without Photo ID through reasonable accommodations such as provisional balloting. *E.g.*, Ind. Code §§ 3-11.7-5-1, -5-2.5(c) (permitting indigents and religious objectors to validate provisional ballots by executing affidavit at county clerk's office within 10 days of election).

Further, the State Respondents (Br. 31-35) persuasively demonstrate that there is no competent evidence to suggest a disparate impact on racial minorities, the indigent, the elderly, or any other identifiable sub-group – indeed, the only Indiana-specific study of the Photo ID law's effects concludes that "there is no consistent evidence that counties that have higher percentages of minority, poor, elderly or less-educated populations suffer any reduction in voter turnout relative to other counties."[65]

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[65] Jeffrey Milyo, TRUMAN INST. OF PUB. POLICY, Report No. 10-2007, *The Effects of Photographic Identification on Voter*

(Continued on following page)

Following the 2006 mid-term elections, Dan Seligman of the non-partisan Electionline.org organization[66] testified that,

> On voter I.D., new rules and pre-election court challenges to new voter I.D. laws in Indiana, Ohio, and Georgia did not cause significant problems in the polls. Indiana's new photo-only voter I.D. law did not hinder those voters that showed up at the polls, at least according to Indiana's Secretary of State, and an independent organization that ran hotlines for voters reported that only a small percentage, under seven percent, of election day complaints focused on voter I.D. issues. * * * Scattered issues aside and not straying into the debate about whether voter I.D. secures the vote or blocks access to it, voter I.D. requirements did not seem to pose

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Turnout in Indiana: A County-Level Analysis (Nov. 2007), *available at* http://truman.missouri.edu/uploads/Publications/Report%2010-2007.pdf. See also Michael Alvarez, Delia Bailey, Jonathan N. Katz, *The Effect of Voter Identification Laws on Turnout*, CAL. INST. OF TECH., Soc. Science Working Paper 1267 (Oct. 2007).

[66] "Electionline, previously known as the Election Reform Information Project, was established after the 2000 election by a few charitable trusts as a nonpartisan and, most importantly, non-advocacy clearinghouse of news analysis data on election reform information. We're solely funded by the [Pew] charitable trusts and a grant administered by the University of Richmond." Testimony of Dan Seligman, Editor electionline.org, Before the U.S. Election Assistance Comm'n (Dec. 7, 2006) at 200-01.

> a stumbling block on election day to those voters who came to polling places.[67]

Balanced against the significant public interest in election integrity and voter confidence which effective voter identification requirements serve, the lack of *any* credible evidence of voter disenfranchisement or disparate impact on particular sub-classes mandates the rejection of Petitioners' challenges, and affirmance of the judgment below.

CONCLUSION

Amici believe that requiring a person to provide Photo ID before casting a ballot, when that identification is free and reasonably accessible to all eligible voters, is a "best practice" that will work to prevent vote fraud and increase public confidence in the election process. Indiana's Photo ID law is consistent with this "best practice," and *amici* accordingly urge the Court to affirm the judgment below.

Respectfully submitted,

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[67] *Id.* at 207-08.

APPENDIX

BIOGRAPHICAL INFORMATION ON INDIVIDUAL *AMICI*

Bob Michel, served as a member of the U.S. House of Representatives from Illinois from 1957 to 1993. During that time he held a number of leadership roles, including those of Minority Whip and Minority Leader. Congressman Michel was a member of the Carter-Ford Commission on Election Reform and the Carter-Baker Commission on Election Reform. President Bush acknowledged Congressman Michel's contribution to election reform at the White House ceremony when President Bush signed HAVA. "Although Gerald Ford and Jimmy Carter could not be here today, our nation is grateful for their work on election reform and for all they have given to America. We're pleased, however to be joined by the co-chairman of the commission, former Congressman Bob Michel of Illinois, former Presidential Counselor Lloyd Cutler." Remarks by President at Signing of H.R. 3295, The Help America Vote Act of 2002, October 29, 2002.

CURRENT OR FORMER SECRETARIES OF STATE

Mary Kiffmeyer was elected Minnesota's Secretary of State and served in this capacity from 1999 to 2006. Ms. Kiffmeyer was responsible as Minnesota's chief election officer for overseeing the administration of all state and federal elections, involving more than 20,000 election judges, and 4,000 polling places. A particular challenge was to administer elections

under Minnesota's same-day registration law, which Ms. Kiffmeyer believes only highlighted the need to reliably verify voter identity. In 2004 Ms. Kiffmeyer served as President of the National Association of Secretaries of States, and has served as a Member of the Advisory Board of the U.S. Election Assistance Administration ("EAC"), an independent federal agency created under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (codified in scattered sections of 2, 5, 10, 36, and 42 U.S.C. § 15481) ("HAVA"). Secretary of State Kiffmeyer is a Republican.

DEMOCRAT AND REPUBLICAN INDIANA ELECTION CLERKS AND CURRENT AND FORMER PRESIDENTS OF THE INDIANA CLERKS ASSOCIATION

Sarah M. Taylor served two terms as the Clerk of Marion County, Indiana between January 1995 and December 2002. During this time Ms. Taylor was responsible for the administration of elections for 917 precincts and 520,000 registered voters in Indianapolis, Indiana. Ms. Taylor served as the facilitator for the Vote Indiana Team established by the Indiana Secretary of State's office, charged with developing a state plan to qualify for $50 million in federal election-improvement funding authorized by HAVA. Ms. Taylor also served as President of the Association of Clerks of the Circuit Courts of Indiana in 2001. Ms. Taylor is a Republican.

Dale Brewer has served since 2000 as the Clerk of Porter County, Indiana, and previously served on the County's Election Board. Ms. Brewer is current President of the Association of Clerks of the Circuit Courts of Indiana, and has previously served on its Legislative Committee. Before that Ms. Brewer was an election precinct official and election judge. Ms. Brewer has served on recount commissions. Mr. Brewer is a Republican.

Lynne Spevak served as the Clerk of La Porte County, Indiana from 1998 through 2005. Ms. Spevak served as President of the Association of Clerks of the Circuit Courts of Indiana in 2004. Ms. Spevak served as a member of the U.S. Election Assistance Commission Standard Board in 2004 and 2005. Ms. Spevak is a Democrat.

Shelly Hiatt Parris is the current Clerk of Sullivan County Indiana. Ms. Parris has served as clerk of Sullivan County from 1980 until 1988. Ms. Parris again served as clerk from July 2000 until December 2007 when her current term expires. Ms. Parris is a past President of the Association of Clerks of the Circuit Courts of Indiana. Ms. Parris is a Democrat.

Linda J. Grass was Clerk of Hancock County Indiana from 1999 through 2006. Ms. Grass was President of the Association of Clerks of the Circuit Courts of Indiana in 2005, and was Indiana "Clerk of the Year" in 2001. Ms. Grass is a Republican.

OTHER LOCAL ELECTION OFFICIALS

Wesley R. Kliner, Jr. served as a Commissioner of the Hamilton County, Tennessee Election Commission from 2001 to 2003, and a Commissioner of the Tennessee State Election Commission from 2003 to 2005. Mr. Kliner has served on the EAC's Board of Advisors since 2004, and presently serves as its Vice-Chair.

Harry W. MacDougald has served on the Fulton County, Georgia Board of Registration since 2002. In the period immediately preceding the 2004 presidential election, Fulton County election officials faced a significant number of fraudulent or otherwise problematic registration applications, which in Mr. MacDougald's view highlighted the need for stricter identification requirements for registration and voting. See *Common Cause/Ga. v. Billups*, 406 F. Supp.2d 1326, 1347 (N.D. Ga. 2005) (describing MacDougald affidavit reporting questionable voter registrations).

Susan Sautermeister presently serves as the Election Commissioner for District One in Madison County, Mississippi. Ms. Sautermeister has 17 years' experience as a county or municipal election commissioner, is a past President of Mississippi's Election Commissioners' Association, and has served as a consultant on election fraud and ballot security issues. She presently serves as a member of the EAC's Board of Advisors.

STATE LEGISLATORS WITH ELECTION EXPERIENCE

Senator Delbert L. Scott represents Missouri's 28th Senate district. Senator Scott serves as Chairman of the Senate Financial, Governmental Organizations, and Elections Committee with jurisdiction of Missouri Election law. Senator Scott was sponsor of the Missouri Voter Protection Act, which adopted a wide range of election reforms recommended by the Carter-Baker Commission, including a provision for persons to provide photo identification before casting a ballot. Senator Scott is a Republican.